

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENZELL MAGIC METCALF,

Petitioner,

v.

JOHN DOE, Warden,

Respondent.

No. 1:25-cv-00607-SKO (HC)

**ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE**

**FINDINGS AND RECOMMENDATION  
TO SUMMARILY DISMISS  
UNEXHAUSTED PETITION**

**[TWENTY-ONE DAY OBJECTION  
DEADLINE]**

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed the instant habeas petition on May 9, 2025, challenging a prison disciplinary hearing. Because the petition appears to be unexhausted, the Court will recommend it be DISMISSED.

**DISCUSSION**

A. Preliminary Review of Petition

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court . . . .” Rule 4 of the Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to

dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir. 2001).

### B. Exhaustion

The exhaustion of available state remedies is a prerequisite to a federal court's consideration of claims sought to be presented in habeas corpus proceedings. See 28 U.S.C. § 2254(b); see also Rose v. Lundy, 455 U.S. 509 (1982). The exhaustion doctrine is based on comity to the state court and gives the state court the initial opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose, 455 U.S. at 518.

A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full and fair opportunity to hear a claim if the petitioner has presented the highest state court with the claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

Additionally, the petitioner must have specifically told the state court that he was raising a federal constitutional claim. Duncan, 513 U.S. at 365-66. In Duncan, the United States Supreme Court reiterated the rule as follows:

In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state remedies requires that petitioners “fairly presen[t]” federal claims to the state courts in order to give the State the “opportunity to pass upon and correct alleged violations of the prisoners' federal rights” (some internal quotation marks omitted). If state courts are to be given the opportunity to correct alleged violations of prisoners' federal rights, they must surely be alerted to the fact that the prisoners are asserting claims under the United States Constitution. If a habeas petitioner wishes to claim that an evidentiary ruling at a state court trial denied him the due process of law guaranteed by the Fourteenth Amendment, he must say so, not only in federal court, but in state court.

Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

Our rule is that a state prisoner has not “fairly presented” (and thus exhausted) his federal claims in state court *unless he specifically indicated to that court that those claims were based on federal law*. See Shumway v. Payne, 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held that the *petitioner must make the federal basis of the claim explicit either by citing*

1 *federal law or the decisions of federal courts, even if the federal basis is “self-*  
 2 *evident,”* Gatlin v. Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.  
 3 Harless, 459 U.S. 4, 7 . . . (1982), or the underlying claim would be decided under  
 4 state law on the same considerations that would control resolution of the claim on  
 federal grounds. Hiiivala v. Wood, 195 F.3d 1098, 1106-07 (9th Cir. 1999); Johnson  
v. Zenon, 88 F.3d 828, 830-31 (9th Cir. 1996); . . . .

5 In Johnson, we explained that the petitioner must alert the state court to the fact that  
 6 the relevant claim is a federal one without regard to how similar the state and federal  
 standards for reviewing the claim may be or how obvious the violation of federal  
 law is.

7 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000) (italics added), *as amended by* Lyons  
 8 v. Crawford, 247 F.3d 904, 904-5 (9th Cir. 2001).

9 Petitioner states he has only sought administrative relief. He indicates he has not  
 10 presented his claims to the California courts, including the California Supreme Court, as required  
 11 by the exhaustion doctrine. Because Petitioner has not presented his claims for federal relief to  
 12 the state courts prior to filing the instant federal habeas petition, the Court must dismiss the  
 13 petition. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006); Jiminez v. Rice, 276 F.3d  
 14 478, 481 (9th Cir. 2001).

### 15 ORDER

16 IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to assign a District  
 17 Judge to the case.

### 18 RECOMMENDATION

19 Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be  
 20 DISMISSED WITHOUT PREJUDICE for lack of exhaustion.

21 This Findings and Recommendation is submitted to the United States District Court Judge  
 22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the  
 23 Local Rules of Practice for the United States District Court, Eastern District of California. Within  
 24 twenty-one (21) days after being served with a copy of this Findings and Recommendation, a  
 25 party may file written objections with the Court and serve a copy on all parties. Id. The document  
 26 should be captioned, “Objections to Magistrate Judge’s Findings and Recommendation” and shall  
 27 not exceed fifteen (15) pages, except by leave of court with good cause shown. The Court will not  
 28 consider exhibits attached to the Objections. To the extent a party wishes to refer to any

1 exhibit(s), the party should reference the exhibit in the record by its CM/ECF document and page  
2 number, when possible, or otherwise reference the exhibit with specificity. Any pages filed in  
3 excess of the fifteen (15) page limitation may be disregarded by the District Judge when  
4 reviewing these Findings and Recommendations pursuant to 28 U.S.C. § 636 (b)(1)(C). The  
5 parties are advised that failure to file objections within the specified time may result in the waiver  
6 of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014). This  
7 recommendation is not an order that is immediately appealable to the Ninth Circuit Court of  
8 Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure,  
9 should not be filed until entry of the District Court's judgment.

10  
11 IT IS SO ORDERED.

12 Dated: May 23, 2025

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE